

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ANTHONY GOMEZ, JR.,

Plaintiff,

-v-

NEW YORK CITY POLICE DEPARTMENT,

Defendant.

USDS SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #:
DATE FILED: 4-28-11

No. 09 Civ. 9660 (RJS) (HBP)

ORDER ADOPTING REPORT AND
RECOMMENDATION

RICHARD J. SULLIVAN, District Judge:

Pro se Plaintiff Anthony Gomez, Jr., filed his Complaint on November 20, 2009, bringing Title VII discrimination claims against Defendant New York City Police Department. By Order dated December 1, 2009, this matter was referred to the Honorable Henry B. Pitman, Magistrate Judge, for general pre-trial purposes and dispositive motions requiring a report and recommendation.

On February 14, 2011, Judge Pitman issued the attached Report and Recommendation recommending *sua sponte* dismissal of this action without prejudice in light of Plaintiff's failure to serve the summons and complaint pursuant to Rule 4(m) of the Federal Rules of Civil Procedure ("Fed. R. Civ. P."). Pursuant to 28 U.S.C. § 636(b)(1), as amended, and Fed. R. Civ. P. 72(b), the parties had fourteen (14) days, plus an additional three (3) days, pursuant to Fed. R. Civ. P. 6(d), or a total of seventeen (17) days, *see* Fed. R. Civ. P. 6(a), from the date of Judge Pitman's Report and Recommendation to file written objections. No party has filed objections to

the Report, and the time to do so has long since expired. *Cf. Frank v. Johnson*, 968 F.2d 298 (2d Cir. 1993).

When no objections to a report and recommendation are made, the Court may adopt the report if there is no clear error on the face of the record. *Adee Motor Cars, LLC v. Amato*, 388 F. Supp. 2d 250, 253 (S.D.N.Y. 2005); *La Torres v. Walker*, 216 F. Supp. 2d 157, 159 (S.D.N.Y. 2000). After reviewing the record, the Court finds that Judge Pitman's Report and Recommendation is not facially erroneous. Accordingly, the Court adopts the Report in its entirety, and for the reasons set forth therein, dismisses the Complaint as to Defendant without prejudice. The Clerk of the Court is respectfully directed to mark this case closed.

SO ORDERED.

Dated: April 28, 2011
New York, New York



RICHARD J. SULLIVAN
UNITED STATES DISTRICT JUDGE

A copy of this Order has been mailed to:

Mr. Anthony Gomez, Jr.
210 East 102nd Street
Apt. 4D
New York, NY 10029

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X

ANTHONY GOMEZ, JR.,	:	
	:	
Plaintiff,	:	09 Civ. 9660 (RJS) (HBP)
	:	
-against-	:	REPORT AND
	:	<u>RECOMMENDATION</u>
NEW YORK CITY POLICE DEPARTMENT,	:	
	:	
Defendants.	:	

-----X

PITMAN, United States Magistrate Judge:

TO THE RICHARD J. SULLIVAN, United States District
Judge,

The pro se plaintiff commenced this action on November 20, 2009 by filing a summons and complaint. My review of the file in May, 2010 disclosed that no proof of service of the summons and complaint had ever been filed and it appeared that the summons and complaint had not, in fact, been served. Accordingly, I issued an Order to plaintiff on May 3, 2010 directing that plaintiff show cause on or before July 6, 2010 why the action should not be dismissed for failure to serve the summons and complaint within the 120-day time limit established by Rule 4(m), Fed. R. Civ. P. Specifically, my May 3, 2010 Order provided:

Despite the fact that Rule 4(m), Fed. R. Civ. P., requires that the summons and complaint be served on all defendants no later than 120 days after the commencement of the action, according to the Court's records, the defendant has not yet been served. Accordingly, pursuant to Federal Rule of Civil Procedure 4(m), it is hereby

ORDERED that plaintiff has until July 6, 2010 either to complete service of the summons and complaint on the defendants or to show good cause why such service has not been made. Failure to complete service or to show cause on or before July 6, 2010, will result in the issuance of a Report and Recommendation recommending the dismissal of this action.

(Emphasis in original.)

On July 6, 2010, I received a letter from Mr. Gomez, Jr. Requesting an extension of time to respond to the Order to Show Cause, which I granted by endorsement on July 12, 2010. Mr. Gomez, Jr. was given until July 31, 2010 to respond.

To date, plaintiff has not filed proof of service, has not explained why service has not been completed and has not contacted my chambers or the Court in any way. Accordingly, I respectfully recommend sua sponte that this action be dismissed on the ground that plaintiff has not completed service of the summons and complaint within the time permitted by Rule 4(m), Fed. R. Civ. P.

OBJECTIONS

Pursuant to 28 U.S.C. § 636(b)(1)(C) and Rule 72(b) of the Federal Rules of Civil Procedure, the parties shall have ten (10) days from the date of this Report and Recommendation to file written objections. See also Fed. R. Civ. P. 6(a) and 6(e).

Such objections (and responses thereto) shall be filed with the Clerk of the Court, with courtesy copies delivered to the chambers of the Honorable Richard J. Sullivan, United States District Judge, Room 640, 500 Pearl Street, New York, New York 10007 and to the chambers of the undersigned, Room 750, 500 Pearl Street, New York, New York 10007. Any requests for an extension of time for filing objections must be directed to Judge Sullivan.

FAILURE TO OBJECT WITHIN TEN (10) DAYS **WILL** RESULT IN A WAIVER OF OBJECTIONS AND **WILL** PRECLUDE APPELLATE REVIEW. Thomas v. Arn, 474 U.S. 140 (1985); United States v. Male Juvenile, 121 F.3d 34, 38 (2d Cir. 1997); I.U.E. AFL-CIO Pension Fund v. Hermann, 9 F.3d 1049, 1054 (2d Cir. 1993); Frank v. Johnson, 968 F.2d 298, 300 (2d Cir. 1992); Wesolek v. Canadair Ltd., 838 F.2d 55, 58 (2d

Cir. 1988); McCarthy v. Manson, 714 F.2d 234, 237-38 & n.2 (2d Cir. 1983).

Dated: New York, New York
February 14, 2011

Respectfully submitted,


HENRY PITMAN
United States Magistrate Judge

Copy mailed to:

Mr. Anthony Gomez, Jr.
210 East 102nd St.
Apt. # 4D
New York, New York 10029